



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Robertson and Penn, Inc., d/b/a National Service Co.

File: B-220283.2

Date: September 25, 1986

DIGEST

Mere fact that awardee of service contract set aside for small business indicated in bid that it would perform services at facility owned by large business is not sufficient to require contracting officer to challenge self-certification in awardee's bid as to its size status, since it is not legally objectionable for a small business to subcontract with a large business on a set-aside contract.

DECISION

Robertson and Penn, Inc., d/b/a National Service Co. (NSC), protests the contracting officer's failure to question the small business status of Crown Laundry & Dry Cleaners, Inc. (Crown) in making an award to the company under invitation for bids (IFB) No. M00264-85-B-0009, issued by the Marine Corps as a small business set-aside for base laundry and dry cleaning services at Quantico, Virginia. We deny the protest.

The IFB was part of a cost comparison to determine whether it would be more economical to accomplish the work in-house using government employees, or by contract. For various reasons, there were a number of delays in completing the cost comparison and bid evaluation, which ultimately led to the Marine Corps' determining that Crown's bid, as adjusted, represented the most economical method of performance. Over the next several months following the Marine Corps' selection of Crown, NSC, next in line, raised various concerns with the agency regarding Crown's subcontracting arrangements for a site where the work would be performed. Immediately prior to the award to Crown, NSC filed a protest with the contracting officer against the small business certification in Crown's bid.

Since the bids had been opened almost a year earlier and since NSC had received early notification of the selection of

Crown for award, the contracting officer concluded that the size status protest was untimely and could not affect the outcome of the procurement. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 19.302(d) (1985). Nevertheless, the contracting officer forwarded NSC's protest to the Small Business Administration (SBA) for consideration regarding Crown's status for future procurements. In the meantime, a contract was awarded to Crown with performance scheduled to begin in late September 1986.

NSC filed a protest with our Office after receiving notification from the Marine Corps that its protest against Crown's small business status was untimely. In NSC's view, the contracting officer had information in his possession casting sufficient doubt on Crown's small business status that he should have filed his own SBA protest challenging Crown's status; according to NSC, this information indicated that Crown improperly would have the overwhelming majority of the contract work performed by a large business subcontractor. In this respect, a contracting officer generally may accept at face value a bidder's self-certification that it is a small business unless he has information prior to award that would reasonably impeach the certification or has received a timely size protest. Foam-Flex Inc., 62 Comp. Gen. 300 (1983), 83-1 C.P.D. ¶ 383.

The Marine Corps responds that the contracting officer found no reason to question Crown's certification that it was a small business either from any information provided by Crown with its bid or from any information subsequently provided by other sources. Further, the Marine Corps argues that the entire protest now is academic because the SBA has dismissed NSC's challenge to Crown's small business status.


We do not consider the matter academic. The SBA dismissed NSC's protest because it was untimely as to the instant procurement and because it alleged an affiliation between Crown and a large business for this procurement only, so that a decision also would have no prospective application. The procurement regulations, however, provide that a contracting officer may on his own protest an offeror's small business representation in any given procurement by forwarding the protest to the SBA either before or after award, FAR, 48 C.F.R. § 19.302(c)(1), and that any such protest always is considered timely. FAR, 48 C.F.R. § 19.302(d)(2). The SBA thus presumably would render a decision on Crown's small business status for this particular procurement if the contracting officer were to file his own protest at this time. Accordingly, it is appropriate for our Office to consider whether Crown's size status should have been, and

thus now should be, challenged by the contracting officer himself for purposes of award under the protested IFB.

The only information in Crown's bid bearing on NSC's point is a listing of the address of the facility at which the company intends to perform laundry services. The facility located at this address apparently is owned by a large business. We do not believe this fact, by itself, is sufficient to have required the contracting officer to question the validity of Crown's small business certification, since it is not legally objectionable for a small business to subcontract with a large business on a small business set-aside service contract. See Mann Rental Service, B-216868, Oct. 31, 1984, 84-2 C.P.D. ¶ 493. While a small business cannot transfer or impute its small business status to an established joint venture composed of itself and a large business for purposes of competing for small business set-asides, Mantech International Corp., B-216505, Feb. 11, 1985, 85-1 C.P.D. ¶ 176, nothing on the face of Crown's bid indicated it was doing so here.

Aside from the face of Crown's bid, the only information currently before the contracting officer is NSC's contention that there is an improper affiliation between Crown and the large business based on the amount of contract work to be performed at the large business facility. Nothing in the record indicates, however, that the contracting officer has any information supporting NSC's assertions as to the extent of the work Crown intends to subcontract, and we do not think a contracting officer is required to question an offeror's status based solely on a competitor's bare assertions. (Crown itself disputes NSC's assertion and alleges that a number of services required by the solicitation in fact will be performed at other sites.)

Given the absence of a timely protest by NSC or another bidder or information that would reasonably impeach Crown's self-certification, the contracting officer properly accepted Crown's small business certification as correct on its face. See Keco Industries, Inc., 56 Comp. Gen. 878 (1977), 77-2 C.P.D. ¶ 98. The protest is denied.

for 
Harry R. Van Cleve
General Counsel